

### **REMARKS**

The Office Action dated May 13, 2008 has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

As a preliminary matter, Applicant affirms the election to prosecute the subject matter of claims 1, 4-6, and 15-19 without prejudice. Claims 2-4, 6-15, and 20-36 have been cancelled without prejudice. Claims 1, 5, and 16-19 are respectfully submitted for consideration. It should be noted that claims 1, 5, and 16-18 have been amended to more particularly point out and distinctly claim the subject matter of the claimed invention. No new matter has been added.

The drawings were objected to under 37 C.F.R. §1.83(a) as not showing every feature of the invention as specified in the claims. In particular, the Office Action indicated that the “veins” of claim 16 must be illustrated, or the feature cancelled from the claims. Applicant respectfully submits that claim 16 has been amended to remove any reference to “veins”. It is respectfully requested that this objection be withdrawn.

Claims 5, 16, and 17 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Applicant respectfully submits that claims 5, 16, and 17 have been amended to overcome the deficiencies noted in the Office Action.

Claims 1, 4-6, 15, 18 and 19 were rejected under 35 U.S.C. §102(b) as being anticipated by Graves (United States Patent No. 5,482,245). Applicant respectfully

submits that claims 1, 4-6, 15, 18 and 19 as submitted herein recite subject matter which is neither disclosed nor suggested in Graves.

Independent claim 1, upon which claims 5 and 16-19 are directly or indirectly dependent, is directed to a tree stand comprising a fluid reservoir about a tree retaining member including a tree gripping means. The tree gripping means comprises projections. The fluid reservoir comprises a cylindrical or frustoconical member being closed at one end thereof by a base. The tree retaining member is connected to the base. The tree retaining member comprises a substantially cylindrical hollow member, and the tree gripping means comprises a plurality of projections arranged on the interior surface of the tree retaining member. The tree retaining member is adapted to retain a tree inserted therein without using any movable mechanical means such as screws, bolts, or the like. It is respectfully submitted that Graves fails to disclose or suggest the claimed invention.

Graves discloses a tree and pole stand. The stand includes an outer container, and an inner container which is receivable by the outer container. A plurality of braces are connected to the outer container, to enable the outer container to be supported by an inner wall of a decorative container. The inner container includes a series of eye bolts to position the tree or pole within the container.

Graves is significantly different from the claimed invention. As mentioned above, claim 1 includes a fluid reservoir with a cylindrical or frustoconical member and a tree retaining member connected to the base. The tree retaining member is arranged to retain a tree inserted therein, without movable mechanical means. In Graves, as discussed

above, the inner container and eye bolts sit inside of an outer container and a decorative container, but cannot in any way be interpreted to be connected to a base or a fluid reservoir. The inner container also requires the use of eye bolts, which is a significant difference from the present invention. Therefore, it is respectfully requested that the rejection over Graves be withdrawn.

Claims 16 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Graves in view of Yocca (United States Patent No. 3,987,996). In making this rejection, the Office Action took the position that Graves disclosed all the elements of the invention with the exception of projections running substantially axially with the tree retaining member, and projections arranged to maintain a degree of separation between a tree trunk and portions of the interior surface of the tree retaining member.

However, Applicant respectfully submits that Yocca fails to cure the significant deficiencies which exist in Graves, as discussed above. Yocca discloses a combination hassock and a Christmas tree holder. However, Yocca merely discloses a decorative cylindrical housing, which has a holder for trunks of Christmas trees.

The present invention includes a unique configuration of elements which provides a tree stand which does not require a user to bend over or kneel to secure the tree therein. The present invention also provides a device having simplified manufacture and construction over that which is known in the art.

The device of Graves, with the complex inner and outer casings, adjustable bracings, and eye bolts, requires a user to bend down or kneel in order to adjust the eye

bolts to grip a tree, and also to make the other adjustments associated with the use of the device thereof. Yocca similarly includes movable mechanical means to secure the tree. The holder includes a cylinder 10 with four springs 30 attached therein. The springs require complicated manufacture and have broad flat faces which engage the tree butt. These broad springs cannot be compared to the projections which are described according to the present application. Additionally, the broad flat faces of springs 30 could not provide an appropriate level of grip on a tree butt, which is provided by the present invention.

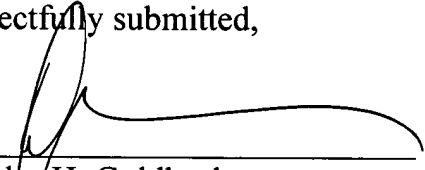
Furthermore, there are significant differences between the device of Graves with eye bolts and adjustable braces and the spring mechanism of Yocca. Quite contrary to U.S. law regarding rejections under 35 U.S.C. §103, a combination of Graves and Yocca would require a complete destruction of the device of Graves as the primary reference. It is improper to attempt to combine two references in an effort to yield the claimed invention if the combination of the references would require the complete destruction or undue modification of the device of the primary reference.

In view of the above, Applicant respectfully submits that each of claims 1, 5, and 16-19 recite subject matter which is neither disclosed nor suggested in the cited prior art. Applicant submits that this subject matter is more than sufficient to render the claimed invention unobvious to an ordinary person skilled in the art. Applicant respectfully requests that claims 1, 5, and 16-19 be found allowable, and this application passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicant's undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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